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SUPREME COURT, U. S.

No. 73-935

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1973

ELMO DEAN DRESSEL, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners raise issues concerning the sufficiency of the indictment, the admissibility of an exhibit, and the sufficiency of the evidence to sustain their convictions.

After a jury trial in the United States District Court for the District of Colorado, petitioners were convicted of possessing property worth more than $100 that had been stolen from interstate commerce, in violation of 18 U.S.C. 659. Sentences of imprisonment were imposed as follows: Dressel, five years; Hughes, four years; Schwartz, three years; and Smith, two and a half years. Fines in varying amounts were also imposed on each petitioner. The court of appeals affirmed (Pet. App.).

The facts of the case are set out in the opinion of the court of appeals, which also answers petitioners'

claims, and we rely on that opinion in opposing certiorari.[1] We note that there is a conflict between the instant case and the cases cited by petitioners on the issue of the necessity for specifying in an indictment charging an offense under 18 U.S.C. 659 the particular interstate commerce facility from which the goods were stolen, but we believe this not to be an issue of sufficient general importance to merit review by this Court. Moreover, the recent cases have all agreed with the court of appeals' position here, and this Court has previously declined to review this conflict. *United States* v. *Spivey*, 448 F. 2d 390 (C.A. 4), certiorari denied, 405 U.S. 927; *Dunson* v. *United States*, 404 F. 2d 447 (C.A. 9), certiorari denied, 393 U.S. 1111; *United States* v. *Prujansky*, 415 F. 2d 1045 (C.A. 6); *United States* v. *Wora*, 246 F. 2d 283 (C.A. 2); *United States* v. *Hampton*, 341 F. Supp. 481 (E.D. Wis.).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[1]Petitioners' claim that the evidence was insufficient is raised here for the first time and need not be considered by this Court. *Lawn* v. *United States*, 355 U.S. 339, 362. In any event, the evidence, as shown in the court of appeals' opinion (Pet. App. 3A-4A), was ample to support the convictions.